

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 4 1997

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment to Section 73.202)	MM Docket No. 93-28
FM Table of Allotments)	RM-8172
(Colonial Heights, Tennessee))	RM-8299

To: Chief, Mass Media Bureau

OPPOSITION TO REQUEST FOR RECONSIDERATION

Murray Communications, by its attorneys, pursuant to Section 1.106 of the Commission's rules, hereby opposes the January 27, 1997 Request for Reconsideration filed by Media Services Group on behalf of Newport Publishing Co., the licensee of WMXK(FM), Morristown, Tennessee.^{1/} In opposition thereto, the following is submitted:

1. The Commission, by Memorandum Opinion and Order, 62 Fed. Reg. 664, published January 6, 1997, ordered pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of station WMXK(FM), Morristown, Tennessee be modified to specify operation on Channel 231A in lieu of Channel 240A. Murray Communications wishes to point out that the Request for Reconsideration procedurally fails to comply with the Commis-

^{1/} To the extent that this opposition is being filed several days subsequent to the date specified in the Commission's rules for the filing of oppositions, its acceptance is respectfully requested. Murray Communications wished to be able to report to the Commission on its communications with the representative of WMXK(FM) prior to responding to its request for reconsideration.

024

sion's rules. The Request for Reconsideration is filed by Media Services Group of Greeneville, Tennessee, an entity that does not appear to be the licensee of WMXX(FM) or an attorney.

2. Section 1.21(a) of the Commission's rules states that any party may appear before the Commission and be heard either in person or by an attorney. It appears that the appearance by Media Services Group is neither. Section 1.23(a) of the Commission's rules, admits persons to practice before the Commission who are members in good standing of the bar of the Supreme Court of the United States or the highest court of any state, territory or the District of Columbia. Since neither Bruce G. Morrison nor Media Services Group is a member of any of these, Media Services Group is not properly before the Commission in a representative capacity for Newport Publishing Co., the licensee of WMXX(FM).

3. Additionally, the Request for Reconsideration is not verified. Section 1.52 of the Commission's rules requires that for the original of documents filed by any party who is not represented by an attorney, that party should sign and verify the document himself, herself, or itself, and state an address. The failure to verify the Request for Reconsideration renders the document subject to return without consideration. See Section 1.52 of the Commission's rules ("If the original of a document is not signed . . . the matter may proceed as though the document had not been filed").

4. Media Services Group complains on behalf of Newport Publishing Co. that their "client radio station management" was

not contacted prior to the efforts by Murray Communications to effect the requested channel changes. If Media Services Group is complaining about a lack of service, this is simply not true. Each filing made by Murray Communications in this proceeding has been served upon Newport Publishing Co. or its predecessor. Further, the Commission in both its Order to Show Cause, 8 FCC Rcd 7901 (1993) and its recent Memorandum Opinion and Order, sent by certified mail, return receipt requested, copies of the issued documents to the licensee of WMXX(FM).

5. If the complaint of Media Services Group is that WMXX(FM) was not contacted to seek its consent to the channel move, this complaint is not cognizable under the Commission's rules and procedures. The Commission has held that the substitution of an existing station's channel at one community serves the public interest where the substitution permits the provision of expanded service at another community. See Coleman, Sebewaing and Tuscola, Michigan, 11 FCC Rcd 112 86, 87-88 (1996). Thus, Murray Communications was not required to obtain the consent of Newport Publishing Co. for a change in the channel of WMXX(FM).

6. Media Services Group also complains that Murray Communications agreed to pay Betap Broadcasting, Inc. a sum in excess of its costs for the changes proposed to the licensed facility of Betap Broadcasting, Inc. to obtain its cooperation in this proceeding. There is no Commission rule or policy which prohibits Murray Communications from agreeing to the payment of any sum of money in order to move a station's transmitter site in

furtherance of the upgrade of its facility. The change proposed for WAEY-FM involved a relocation of the transmitter site. Accordingly, it was necessary for Murray Communications to negotiate directly with the licensee of WAEY-FM. Further, under existing Commission precedent, Murray Communications could not propose a transmitter site relocation for WAEY-FM without obtaining the consent of the licensee of WAEY-FM.

7. Media Services Group questions on behalf of Newport Publishing Co. "Murray's sincerity in agreeing to reasonable costs". This complaint is wholly speculative. Murray Communications is well aware of its responsibilities under Circleville, Ohio, 8 FCC 2d 159 (1967) to reimburse Newport Publishing Co. for its reasonable expenses involved in changing channels. In fact, as shown in the letters attached to this opposition, Murray Communications recently wrote to Media Services Group offering to meet with Newport Publishing Co. to coordinate the channel change and the reimbursement of expenses. Media Services Group replied to Murray Communications that it would "listen to any proposal that Murray Communications may have". Accordingly, a large portion of the concerns of Media Services Group is already being addressed by the parties to this proceeding, and it does not appear as if there is any need for the Commission to take any further action in this regard other than to dismiss the Request for Reconsideration.

8. Finally, Media Services Group alleges on behalf of Newport Publishing Co. that Newport Publishing Co. filed a timely


expression of interest. This is incorrect. The predecessor to Newport Publishing Co., Franklin Communications, Inc., expressed concern over the adverse consequences from changing its frequency, cited the cost of changing its logos and advertising, the costs of obtaining new equipment, and questioned the financial viability of Murray Communications. None of these statements comes close to expressing interest in a non-adjacent channel that is proposed to be allotted. See Oakhurst, Firebaugh and June Lake, California, 9 FCC Rcd 655 (1994) ("The proponent of an allotment proposal, to be considered bona fide must state a clear intention to apply for the channel, as well as a willingness to construct a station").

9. In conclusion, the filing by Media Services Group on behalf of Newport Publishing Co. is fatally defective in that it is not filed in compliance with Section 1.52 of the Commission's rules which requires verification. For this reason alone, the Request for Reconsideration should be summarily dismissed. Even if considered on its merits, however, it fails to raise any issue which would merit reconsideration. At most, the Request for Reconsideration is merely a plea to ask that Newport Publishing Co. is reimbursed its reasonable expenses for changing channels, something that Murray Communications has already committed itself to do in this proceeding.

WHEREFORE, for the reasons above, the Request for Reconsideration filed by Media Services Group on behalf of Newport Publishing Co. should be dismissed or denied.

Respectfully submitted,

MURRAY COMMUNICATIONS

By: 
John F. Garziglia
Its Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-0600

March 4, 1997

Murray **Communications**

1628 Woodstone Drive / Kingsport, TN 37663 / Phone (423) 239-4765 Fax (423) 239-3283

February 13, 1997

Mr. Bruce G. Morrison
Chief Operating Officer
Media Services Group
P.O. Box 1630
Greenville, TN 37744

Dear Bruce:

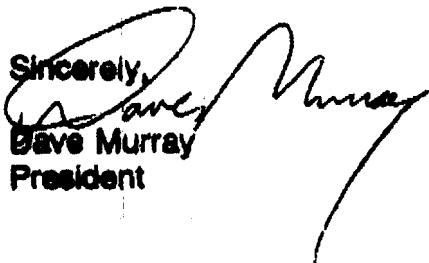
Let me begin by offering my apologies if we have offended you or your client by our lack of direct communication thus far in this proceeding. Please understand, I am not an attorney, nor do I have a law degree nor any legal training. As a result, I have followed the advice of my rather expensive Washington D.C. communications counsel about how to properly proceed. As I told you, in my most recent discussions with my attorney, I asked and John agreed that I should now contact you directly. It was obvious in your last pleading that lack of direct communication was a concern. I understand that you are displeased, however, I would simply suggest that we put the past behind us and begin working together from this point on to effectuate this change.

You folks said in your pleading that you're concerned about not knowing when this change would take place - that it puts your ability to operate in limbo. We can help fix that. It is my counsel's opinion that your pleading will only serve to further delay implementation of this change - effectively adding to the length of time your client must operate "in limbo." We are certainly willing to work together with your management and engineering personnel to develop a timeline for the changes, which will serve to reduce your uncertainty and shorten your period of operating "in limbo."

Please understand as well that, like you, we live and work in our community, having been here since 1981 - and we intend to stay. We, too, believe in being good neighbors. To that end, we again apologize for any ill feelings we may have created. All we can do now is stand ready to work with you to get this done. As I explained on the phone, we have entered into an LMA with Holston Valley Broadcasting Corporation here in Kingsport. I believe that John Jones knows both Bill Boyd and George DeVault well enough to pick up the phone and ask them about our integrity. Hopefully, that will help to convince you of our sincerity in this matter.

I will be happy to come down and meet with you and whomever else may potentially be "in the loop" as we move forward with this project. Please let me know when you'd like to get together.

Sincerely,


Dave Murray
President

Media Services Group

121 W. Summer St.
P.O. Box 1630
Greeneville, TN 37744-1630
(423) 638-4161

Feb. 14, 1997

Dave Murray
Murray Communications
1028 Woodstone Dr.
Colonial Heights, TN 37663

Dear Dave,

It was good to hear from you by phone yesterday. This was the first time we have heard from you personally since I first responded to the FCC in May 1993 about your request to force an involuntary channel move of WMXX.

We are reasonable and fair people and we expect similar treatment. You said contact had not been made previously due to advice from your legal counsel. You said legal counsel had approved of yesterday's contact.

You suggested we consider withdrawing our "Request for Reconsideration" before the FCC, saying it would only serve to delay a final decision.

We are willing to listen to any proposal you may have, just as we would have listened at any time in the more than 3 1/2 years since we first responded to your proposed action.

Our "Request for Reconsideration" stands on its own merits and should you genuinely wish to seek to resolve the concerns we raised, I invite you to do so in person or in writing. We will be happy to hear from you.

Sincerely,



Bruce Morrison
Chief Operating Officer

cc: John M. Jones,
Gregg K. Jones,
Charles Hicks

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that true copies of the foregoing "Opposition to Request for Reconsideration" were sent this 4th day of March, 1997 by U.S. first class mail, postage prepaid, to the following:

* Pamela Blumenthal
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 8308
Washington, D.C. 20554

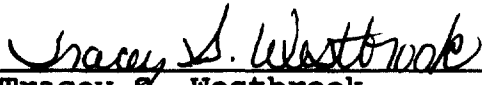
Bruce Morrison
Chief Operating Officer
Media Services Group
121 W. Summer Street
P.O. Box 1630
Greeneville, Tennessee 37744-1630

Tim Lavender
WHAY(FM)
P.O. Box 69
Whitley City, Kentucky 42653

Betap Broadcasting Corporation
No. 1 Radio Lane
Lilly Grove Addition
Princeton, West Virginia 24740

WFSM, Inc.
P.O. Box 1409
Lafollette, Tennessee 37766

Newport Publishing Company
P.O. Box 70
510 West Economy Road
Morristown, Tennessee 377815


Tracey S. Westbrook

* Via Hand Delivery